

TITLE II. COMMENCEMENT OF ACTION; AMENDMENT OF SUMMONS; SERVICE OF SUMMONS, PLEADINGS, MOTIONS AND ORDERS

Rule 3. Commencement of Action

(a) Commencement. A civil action is commenced by filing with the clerk of the court:

(1) A summons in an action described in 28 U.S.C. §1581(a) or (b);

(2) A summons, and within 30 days thereafter a complaint, in an action described in 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930; or

(3) A summons and complaint concurrently in all other actions.

(b) Filing Fee. When an action is commenced, a \$150 filing fee shall be paid to the clerk of the court, except that:

(1) a \$120 filing fee shall be paid when the action is one described in 28 U.S.C. §1581(a); and

(2) a \$25 filing fee shall be paid when the action is one described in 28 U.S.C. §1581(d)(1).

(c) Complaint Fee. When a complaint is filed in an action described in 28 U.S.C. § 1581(a), a \$30 fee shall be paid to the clerk of the court.

(d) Information Statement. When an action is commenced, the party commencing the action shall file the original and a sufficient number of copies for service (when service is to be made by the Office of the Clerk) of a completed Information Statement on the form shown in Form 5 in the Appendix of Forms.

(e) Amendment of Summons. The court may allow a summons to be amended at any time, in its discretion and upon such terms as it deems just, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the amendment is allowed.

(f) Notice to Interested Parties. In an action described in 28 U.S.C. § 1581(c), the plaintiff, as provided in section 516A(d) of the Tariff Act of 1930, shall notify every interested party who was a party to the administrative proceeding of the commencement of the action, by mailing a copy of the summons at the time the action is commenced, or promptly thereafter, by certified or registered mail, return receipt requested, to each such party at the address last known in the administrative proceeding.

Upon filing of a complaint in an action described in 28 U.S.C. § 1581(c), the plaintiff shall promptly serve a copy of the complaint, by certified or registered mail, return receipt requested, on every interested party who was a party to the administrative proceeding at the address last known in that proceeding.

(g) Precedence of Action. Unless the court, upon motion for good cause or upon its own initiative, determines otherwise in a particular action, the following actions shall be given precedence, in the following order, over other actions pending before the court, and expedited in every way:

- (1) An action seeking temporary or preliminary injunctive relief;
- (2) An action involving the exclusion of perishable merchandise or redelivery of such merchandise;
- (3) An action described in 28 U.S.C. § 1581(c) to contest a determination under section 516A of the Tariff Act of 1930;
- (4) An action described in 28 U.S.C. § 1581(a) to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930, involving the exclusion or redelivery of merchandise;
- (5) An action described in 28 U.S.C. § 1581(b) to contest a decision of the Secretary of the Treasury under section 516 of the Tariff Act of 1930.

(h) Special for Actions Described in 28 U.S.C. §1581(c). When an action is commenced

under 28 U.S.C. § 1581(c) to contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930 by the administering authority and such a determination by the Commission, a party shall file a separate summons and complaint with respect to each agency. Also, in an action described in 28 U.S.C. § 1581(c), when the plaintiff files the summons, attorneys for the plaintiff are required to comply with the procedures set forth in Rule 71(c) by filing of a Business Proprietary Information Certification where appropriate.

(i) Disclosure Statement. A disclosure statement as provided by Form 13 shall be filed by every party to an action, including parties seeking or permitted to intervene, and for each amicus curiae. The disclosure statement must be filed with the entry of appearance (or with the summons if no separate notice of appearance is required). If any of the information required changes after the disclosure statement is filed, and before a final judgment is issued, the party or amicus curiae must promptly file an amended disclosure statement.

PRACTICE COMMENT: For the appropriate summons form and number of copies to be filed, refer to Forms 1 to 4 of the Appendix of Forms. Information Statement forms, as shown in Form 5, are available upon request from the office of the clerk.

PRACTICE COMMENT: As provided in Section 516A(a)(2) and (3) of the Tariff Act of 1930, a complaint shall be filed within 30 days after the filing of the summons. See *Georgetown Steel v. United States*, 801 F.2d 1308 (Fed. Cir. 1986).

Nevertheless, counsel are encouraged to commence any action described in Section 516A(a)(2) or (3) of the Tariff Act of 1930 and 28 U.S.C. § 1581(c) by the concurrent filing of a summons and complaint. This will serve to expedite the prosecution of the action.

When an action is commenced, counsel should contact the Clerk's Office not more than 24 hours prior to filing to obtain a court number and shall endorse that court number on the summons and complaint. Counsel for plaintiff shall be responsible for service of the summons and complaint as prescribed in Rules 4(b), (c), (d) and (e). Under these circumstances, the clerk of the court will not make service of the summons as prescribed in Rule 4(a)(4).

PRACTICE COMMENT: As prescribed by Rule 5(e), a summons or a summons and complaint may be filed by delivery or by mailing. The filing is completed when received, except that when the method of mailing prescribed by Rule 5(g) is used, the summons or summons and complaint are deemed filed as of the date of mailing.

PRACTICE COMMENT: Internal inconsistencies exist within the provisions of the Customs Courts Act of 1980 with respect to the method of commencing two kinds of actions. The two kinds are described in 28 U.S.C. § 1581(d), adjustment assistance actions, and 28 U.S.C. § 1581(g), customhouse broker license actions. Both of these are included among those actions which are, pursuant to 28 U.S.C. § 2632(a), to be commenced by filing concurrently a summons and complaint with the clerk of the court as prescribed by the rules of the court. The rules of the court require the plaintiff to cause concurrent service of the summons and complaint to be made. (See Rules 3(a) and 4(b).)

The inconsistency pertaining to adjustment assistance actions appears in 19 U.S.C. § 2395, which requires the clerk of the court, instead of the plaintiff, to serve a copy of the summons and complaint upon the Secretary of Labor or Secretary of Commerce as the case may be. The inconsistency pertaining to customhouse broker license actions appears in 19 U.S.C. § 1641(b), which provides that an action is commenced by filing "a written petition" in the court and further provides that a copy of the petition is to be "transmitted by the clerk of the court to the Secretary of the Treasury"

Until such time as the matter is resolved, the preferred procedure to achieve uniformity and consistency and to minimize the ambiguity created by these inconsistent statutory provisions is to follow the provisions in Title 28. (In one unreported case, *James A. Barnhart v. United States*, Court No. 81-3-00328, the court directed plaintiff to comply with the requirements of 28 U.S.C. § 2632(a) by filing a summons and complaint notwithstanding the fact that plaintiff had complied with the requirements of 19 U.S.C. § 1641(b) by filing a petition.)

PRACTICE COMMENT: Although this rule requires that the two agencies subject to suit under 26 U.S.C. § 1581(c) are in the first instance the subject of separate summonses and complaints, it does not prohibit consolidation of actions against the two agencies upon an adequate showing of grounds for consolidation.

PRACTICE COMMENT: A party seeking to commence judicial review of an antidumping, countervailing duty, or injury determination regarding a class or kind of merchandise from a signatory to the North American Free Trade Agreement should be aware of the additional notice requirements of 19 U.S.C. § 1516a(g)(3) and (4) and the separate filing requirements of 19 U.S.C. § 1516a(a)(5).

(As amended Nov. 4, 1981, eff. Jan. 1, 1982; July 21, 1986, eff. Oct. 1, 1986; Dec. 3, 1986, eff. Mar. 1, 1987; Sept. 25, 1992, eff. Jan. 1, 1993; Nov 29, 1995, eff. Mar. 31, 1996; Aug. 29, 1997, eff. Nov. 1, 1997; May 27, 1998, eff. Sept. 1, 1998; Jan. 25, 2000, eff. May 1, 2000; Aug. 29, 2000, eff. Jan. 1, 2001; Dec. 18, 2001, eff. Apr. 1, 2002.)